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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,075	07/11/2003	Frank Friedland	732-A03-002	3596

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EXAMINER	
THANH, QUANG D	

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/618,075	FRIEDLAND, FRANK	
	Examiner	Art Unit	
	Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 15-16 are objected to because of the following informalities: "the sealed end covering the handle with the open end the bag lying inside the cardboard tube trapped between the second closure and the cardboard tube" is unclear and is recommended to be replaced with -- the sealed end covering the handle, ***and*** the open end ***of*** the bag lying inside the cardboard tube ***is*** trapped between the second closure and the cardboard tube --. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 5-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US 2004/0049138 A1) in view of Yamasaki et al. (5,247,925).

4. Re claim 1, Li discloses a head massager (fig. 8) comprising a bundle of malleable rods 16 having a top member 15 within which the top end of the bundle of rods is fixed and the rods are free at the bottom end of the bundle (fig. 8), a handle including a top half 1 and a bottom half 2 articulated together (best seen in fig. 8), the bottom half defining a lower recess receiving the top member 15 fixed therein (fig. 8), a motor 9 having an output shaft on which is eccentrically mounted a weight 11 mounted

in the bottom half with the eccentrically weight lying in juxtaposition to but spaced from the top member 15, a battery receiving plate 4, an electrical circuit coupling the battery receiving plate and motor (paragraph 18), a switch 8 mounted and a manually operable switch actuator 7 for actuating the switch to enable power to be supplied to the motor when batteries 6 are mounted on the battery receiving plate 4 (fig. 8), except that it is silent regarding the eccentric weight being a magnet. However, Yamasaki teaches that an electro-magnet or an eccentric sash weight can be used and mounted at the end of the shaft of a motor for providing vibration (col. 4, lines 26-30). Therefore, because these two elements are equivalent structures known in the art, as taught by Yamasaki, and were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the weight for the electromagnet.

Li discloses the claimed invention except that the switch, the manually operable switch actuator and the battery receiving plate are all located in the top half and are not arranged as recited in claim 1. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange the elements mentioned above as claimed, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse, 86 USPQ 70. In re Anderson's Black Rock Inc. v. Pavement Salvage Co. Inc., 163 USPQ 673.*

5. Re claims 5 and 8, Li also discloses a readily attachable and detachable latch couples the top half to the bottom half (best seen in fig. 8); wherein the bottom half 2 includes an end cap 12 containing the recess (fig. 8).

6. Re claims 6-7, Li discloses the claimed invention except for the switch including a spring biased plunger and the manually operable switch actuator including a spring biased push button and actuating rod for contacting and closing the switch. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a spring-biased push-button switch to turn the power on/off, since the examiner takes Official Notice of the spring-biased push-button switch that is well known for their use in hand-held massaging device art, and the selection of any of these known equivalents to the power switch would be within the level of ordinary skill in the art.

7. Re claim 12, Li discloses protective coverings (round ends) are mounted on the free ends of the rods (fig. 8, see claim 8).

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li/Yamasaki in view of Harrison (6,110,102). The combined references discloses the claimed invention except for a transparent top haft of the handle. However, Harrison discloses a similar vibration device having a transparent handle (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device to make the handle transparent, as suggested and taught by Harrison, for the purpose of improving the aesthetic appearance of the device, thus making the device to look more attractive.

9. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li/Yamasaki in view of Sorlie et al. (US D473,949 S). The combined references discloses the claimed invention except for the handle being decorated with figures and the bottom half is decorated with the face of a wizard. However, Sorlie teaches a head-massaging device having a handle with the bottom portion being decorated with the face of a wizard (fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device to decorate the handle with a face, as taught by Sorlie, for the purpose of improving the aesthetic appearance of the device, thus making the device to look more attractive.

10. Claims 9, 12-13, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li/Yamasaki in view of Robbins et al. (US 2003/0083600 A1). The combined references discloses the claimed invention including protective coverings (round ends) mounted on the free ends of the rods, except for the bundle of rods contains rods of three different lengths and plastic balls constitute the protective coverings. However, Robbins teaches a head- massaging device having a bundle of rods containing rods of different lengths 22/2222 (fig. 22, paragraph 65) so that the top of the head may be simultaneously massaged with the fingers massaging the remainder of the head thereby increasing the pleasurable benefits of the massage and plastic ball coverings 30 (paragraph 43) to protect the scalp against injury. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device to includes rods having different lengths and plastic ball

covering, as taught by Robbins, for the purpose of increasing the pleasurable benefits of the massage (paragraph 65) and to protect the scalp against injury (paragraph 43).

11. Claims 10-11 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li/Yamasaki/Robbins'600 in view of Robbins et al. (6,450,980 B1). The combined references discloses the claimed invention except for a visual indicator is marked on the bundle of rods showing where bends occur during rod deployment. However, Robbins '980 teaches a head- massaging device comprising a bundle of rods, each rod containing a bendable portion 124 and the bending may be accomplished by use of the plurality of visual indicator strips 132-136 (fig. 11, col. 4, lines 62-67) so that the rod can be bended under application of electrical current, thereby increasing the pleasurable benefits of the massage. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device to include visual indicator strips, as taught by Robbins, for the purpose of allowing the rods to contract and bend at the strip under application of electrical current thereby increasing the pleasurable benefits of the massage. With respect to the limitation "one visual indicator is marked on the rods about ¼ of the lengths of the longest rods from the handle, and a second visual indicator is marked on the longest rods ¾ of their lengths from the handle", it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the location of these strips on the rods, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li/Yamasaki in view of Al-Killidar (6,899,106). The combined references discloses the claimed invention except for a light included in the electrical circuit. However, Al-Killidar teaches a massaging device having a switch 42 and a light 44 included in the electrical circuit (fig. 3) and coupled to the switch 42 for indicating actuation of the switch. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device to include a light operatively coupled to the switch, as taught by Al-Killidar, for the purpose of providing an indication for the actuation of the switch (col. 4, lines 10-12).

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

14. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

This is a provisional obviousness-type double patenting rejection.

15. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 and 14-15 of copending Application No. 10/681,736 in view of Li (US 2004/0049138 A1).

16. Re claim 1, claim 1 of copending Application No. 10/681,736 discloses all the claimed elements except for a top half and a bottom half of the handle, a battery receiving plate, an electrical circuit, a switch and a manually operable switch actuator and batteries. However, Li discloses a head massager (fig. 8) comprising a bundle of malleable rods 16 having a top member 15 within which the top end of the bundle of rods is fixed and the rods are free at the bottom end of the bundle (fig. 8), a handle including a top half 1 and a bottom half 2 articulated together (best seen in fig. 8), the bottom half defining a lower recess receiving the top member 15 fixed therein (fig. 8), a battery receiving plate 4, an electrical circuit coupling the battery receiving plate and motor (paragraph 18), a switch 8 mounted and a manually operable switch actuator 7 for actuating the switch to enable power to be supplied to the motor when batteries 6 are mounted on the battery receiving plate 4. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device of the present application to include all the elements mentioned above, as suggested and taught by Li, for the purpose of providing a support means (top and bottom half) for

housing the device, a power supply means (batteries and battery receiving plate) for causing the vibration and a control means (switch and its actuator) to the control the operation of the device.

17. Re claims 2-14, see claims 2-12 of copending Application No. 10/681,736.

18. Re claims 15-17, see claims 14-16 of copending Application No. 10/681,736 in view of Li, which teaches that it would be obvious to include a handle having a top half articulated with a bottom half (see explanation above).

19. Re claims 18-20, see claims 17-19 of copending Application No. 10/681,736.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ito et al. '211 discloses a facial treatment apparatus. Lacey '400 discloses a head massage device having a vibrator (fig. 2).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Cronin can be reached on (571) 272-4536. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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